

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X
LOSSELL JOHNSON,

Plaintiff,

- against -

THE CITY OF NEW YORK and WARREN
SAVAGE,

Defendants.
-----X

Index No.

Plaintiff designates
Queens County as
place of trial.

The basis of the
venue is the
location of
occurrence.

S U M M O N S

Plaintiff resides at
148-09 88th Avenue (#3B)
Jamaica, N.Y. 11435

County of Queens

To the above named defendant(s):

YOU ARE HEREBY SUMMONED to answer the complaint in this action and to serve a copy of your answer, or, if the complaint is not served with this summons, to serve a notice of appearance, on the Plaintiff's attorney within 20 days after the service of this summons, exclusive of the day of service (or within 30 days after service is complete if this summons is not personally delivered to you within the State of New York) and in case of your failure to appear or answer, judgement will be taken against you by default for the relief demanded in the complaint.

Dated: New York, New York
July 16, 2014

SCHMELKIN ASSOCIATES, P.C.
Attorneys for Plaintiff
LOSSELL JOHNSON
Office & P.O. Address
11 Park Place, 10th Floor
New York, New York 10007
(212) 227-8865

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

-----X Index No.

LOSSELL JOHNSON,

Plaintiff,

- against -

VERIFIED COMPLAINT

THE CITY OF NEW YORK and WARREN
SAVAGE,

Defendants.

-----X

Plaintiff, complaining of the defendants, by his
attorneys, SCHMELKIN ASSOCIATES, P.C., hereby sets forth and
alleges, upon information and belief, as follows:

PRELIMINARY STATEMENT

1. That, at all times hereinafter mentioned, and on
May 8, 2013, the plaintiff, **LOSSELL JOHNSON**, was and still is a
resident of the County of Queens, City and State of New York.

2. That, at all times hereinafter mentioned, and on
May 8, 2013, the defendant, **THE CITY OF NEW YORK**, (hereinafter
referred to as "**THE CITY**") was and still is a domestic municipal
corporation, duly organized and existing under and by virtue of
the laws of the State of New York.

3. That, at all times hereinafter mentioned, and on
May 8, 2013, defendant, **WARREN SAVAGE**, (hereinafter referred to
as "**SAVAGE**"), was and still is a resident of the City and State of New
York.

4. That, the plaintiff, **LOSSELL JOHNSON**, has complied with all the conditions precedent to the commencement of the within action against the defendant, **THE CITY**; plaintiff's Notice of Claim was served on July 23, 2013, within ninety (90) days of the date that the within cause of action having been caused to accrue; that thirty (30) days have elapsed and the claim remains unpaid and unadjusted; that, the plaintiff, **LOSSELL JOHNSON**, testified at an oral examination pursuant to the General Municipal Law on June 30, 2014; and, that this action is being commenced herewith within one (1) year and ninety (90) days of the date that the within cause of action having been caused to accrue.

5. That, on May 8, 2013, the plaintiff, **LOSSELL JOHNSON** was in front of premises known as 138th Street and Jamaica Avenue in the County of Queens, City and State of New York.

6. That, the plaintiff, **LOSSELL JOHNSON**, was drinking a soda when he was approached by police officers, agents, servants, and/or employees of the defendant and/or defendants.

7. That, the plaintiff, **LOSSELL JOHNSON**, was asked to produce identification by the aforementioned police officers, agents, servants, and/or employees of the defendant and/or defendants.

8. That, the plaintiff, **LOSSELL JOHNSON**, had complied with the request, yet was not given a reason for him being stopped and frisked by the police officers, agents, servants, and/or

employees of the defendant and/or defendants.

9. That, the plaintiff, **LOSSELL JOHNSON**, was handcuffed by the police officers, agents, servants, and/or employees of the defendant and/or defendants.

10. That, the plaintiff, **LOSSELL JOHNSON**, was placed in a van by the defendant and/or defendants, their agents, servants, and/or employees, and was driven around for approximately two to three hours whereby he was taken to a police precinct.

11. That, the plaintiff, **LOSSELL JOHNSON**, was stripped searched by the aforementioned police, and/or agents, servants, and/or employees of the defendant and/or defendants.

12. That, cash was taken from the plaintiff, **LOSSELL JOHNSON**, by the aforementioned police officers, agents, servants, and/or employees of the defendant and/or defendants, while the plaintiff, **LOSSELL JOHNSON**, was in custody having been placed in handcuffs.

13. That, the plaintiff, **LOSSELL JOHNSON**, was taken to Central Booking by the aforementioned police officers, agents, servants, and/or employees of the defendant and/or defendants, whereby he was interviewed, and had no feeling in his hands, and they were swollen.

14. That, the plaintiff, **LOSSELL JOHNSON**, had complained about the handcuffs being too tight on his wrists, and was in pain whereby the defendant and/or defendants, their agents,

servants, and/or employees had taken him to Queens Hospital.

15. That, the plaintiff, **LOSSELL JOHNSON**, was taken to Central Booking by the defendant and/or defendants, their agents, servants, and/or employees, and at this time still was not advised as to what charges, if any, were being assessed against the plaintiff, **LOSSELL JOHNSON**.

16. That all charges were dropped, declined, and/or disposed of in the favor of the plaintiff, **LOSSELL JOHNSON**, in that the District Attorney, refused and/or declined to prosecute the plaintiff, **LOSSELL JOHNSON**.

AS AND FOR A FIRST CAUSE OF ACTION

17. That, the plaintiff, **LOSSELL JOHNSON**, repeats, reiterates, and realleges, each and every allegation as set forth in paragraphs 1 through 16 with the same force and effect as if hereinafter more fully set forth at length herein.

18. That, on May 8, 2013, the plaintiff, **LOSSELL JOHNSON**, was assaulted/battered by the defendant, and/or defendants by and through their agents, servants and/or employees.

19. That, the plaintiff, **LOSSELL JOHNSON**, was assaulted/battered without justification and without cause and without excuse.

20. That, the assault/battery took place in front of premises known as 138th Street, and Jamaica Avenue, in the County of Queens, City and State of New York, and other locations wherein

the plaintiff, **LOSSELL JOHNSON** was held against his will by the defendant and/or defendants, their agents, servants and/or employees.

21. That, at all times hereinafter mentioned and on May 8, 2013, and for sometime prior thereto, defendant, **SAVAGE**, was a New York City police officer, and/or agent servant and/or employee of the defendant, **THE CITY**, working in the scope and course of his employment as a New York City Police Officer, and was employed by the defendant, **THE CITY**.

22. That, the aforementioned assault and battery of the plaintiff, **LOSSELL JOHNSON**, was carried out by police officers and/or other servants, agents and/or employees of the defendant, and/or defendants, while working within the scope and course of the employment with the defendants, **THE CITY**.

23. That, by reason of the foregoing, the plaintiff, **LOSSELL JOHNSON**, was injured; was rendered sick, sore, lame and disabled; was caused to undergo hospital and medical treatment and advice; was unable to pursue his usual and regular activities; and, upon information and belief, his injuries are permanent in nature and effect.

24. That this action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving intentional actions, as well as the defendant, and/or defendants, having acted in reckless disregard for the safety of others, as

well as having performed intentional acts.

25. That, by reason of the foregoing, the plaintiff, **LOSSELL JOHNSON**, has sustained damages in an amount in excess of the jurisdictional limits of all the lower Courts of the State of New York.

AS AND FOR A SECOND CAUSE OF ACTION

26. That, the plaintiff, **LOSSELL JOHNSON**, repeats, reiterates, and realleges, each and every allegation as set forth in paragraphs 1 through 25 with the same force and effect as if hereinafter more fully set forth at length herein.

27. That, all of the aforementioned acts, committed by police officers, servants, and/or other employees of the defendant, **THE CITY**, were committed due to the negligence, recklessness and carelessness of the aforementioned police officers, agents, servants and/or other employees of the defendant, **THE CITY**.

28. That the defendant, **THE CITY**, was additionally negligent, reckless and careless in the negligent hiring, negligent retention, and negligent training of various police officers, agents, servants and/or other employees, who were employed by the defendant, **THE CITY**.

29. That, all of the aforementioned acts, committed by the police officers, agents, servants and/or other employees of the defendant, **SAVAGE**, were committed due to the negligence,

recklessness and carelessness of the aforementioned police officers, agents, servants and/or employees of the defendant, **THE CITY**.

30. That, the defendant, **THE CITY**, was additionally negligent, reckless and careless in the negligent hiring, negligent retention, and negligent training of various police officers, agents, servants, and/or other employees, including, but not limited to defendant, **SAVAGE**, who was employed by the defendant, **THE CITY**.

31. That, by reason of the foregoing, the plaintiff, **LOSSELL JOHNSON**, was injured; was rendered sick, sore, lame and disabled; was caused to undergo hospital and medical treatment and advice; was unable to pursue his usual and regular activities; and, upon information and belief, his injuries are permanent in nature and effect.

32. That this action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving the defendant and/or defendants, having acted in reckless disregard for the safety of others, as well as having performed intentional acts.

33. That, by reason of the foregoing, the plaintiff, **LOSSELL JOHNSON**, has sustained damages in an amount in excess of the jurisdictional limits of all the lower Courts of the State of New York.

AS AND FOR A THIRD CAUSE OF ACTION

34. That the plaintiff, **LOSSELL JOHNSON**, repeats, reiterates, and realleges, each and every allegation as set forth in paragraphs 1 through 33 with the same force and effect as if hereinafter more fully set forth at length herein.

35. That, on May 8, 2013, the plaintiff, **LOSSELL JOHNSON**, was caused to be falsely arrested and falsely imprisoned without probable cause.

36. That, the plaintiff, **LOSSELL JOHNSON**, was arrested without an arrest warrant.

37. That, the false arrest/false imprisonment took place in front of premises known as 138th Street, and Jamaica Avenue in the County of Queens, City and State of New York, and other locations and wherein the plaintiff, **LOSSELL JOHNSON** was held against his will by the defendant and/or defendants, their agents, servants and/or employees.

38. That, the aforementioned false arrest and false imprisonment of the plaintiff, **LOSSELL JOHNSON**, was carried out by police officers and/or other servants, agents and/or employees of the defendant, **THE CITY**.

39. That, the aforementioned false arrest and false imprisonment of the plaintiff, **LOSSELL JOHNSON**, was carried out by defendant, **SAVAGE**, and/or other servants, agents and/or

employees of the defendant, **THE CITY**, while working within the scope and course of the employment with the defendant, **THE CITY**.

40. That, by reason of the foregoing, the plaintiff, **LOSSELL JOHNSON**, was injured; was rendered sick, sore, lame and disabled; was caused to undergo hospital medical treatment and advice; was unable to pursue his usual and regular activities; and, upon information and belief, his injuries are permanent in nature and effect.

41. That this action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving intentional actions as well as the defendant and/or defendants, having acted in reckless disregard for the safety of others, as well as having performed intentional acts.

42. That, by reason of the foregoing, the plaintiff, **LOSSELL JOHNSON**, has sustained damages in an amount in excess of the jurisdictional limits of all the lower Courts of the State of New York.

AS AND FOR A FOURTH CAUSE OF ACTION

43. The plaintiff, **LOSSELL JOHNSON**, repeats, reiterates, and realleges, each and every allegation as set forth in paragraphs 1 through 42, with the same force and effect as if hereinafter more fully set forth at length herein.

44. That the plaintiff, **LOSSELL JOHNSON** did not commit any illegal act, nor did the individually named defendant have reason to believe he committed an unlawful act, either before or

at the time he was falsely arrested and imprisoned, assaulted and battered, excessive force was used against him; and deprived him of his constitutional rights pursuant to the Fourth, Fifth and Fourteenth Amendments as set forth in the Constitution of the United States, particularly 42 U.S.C. §1983 and the Constitution of the State of New York.

45. That at all times hereinafter mentioned, the defendant, **SAVAGE**, was employed in his respective capacity by the defendant, **THE CITY** and was acting under the color of his official capacity and his acts were performed under the color of the policies, statutes, ordinances, rules and regulations of the defendant, **THE CITY**.

46. Defendant, **SAVAGE**, is being sued in his personal and official capacities for violation of plaintiff's constitutional rights pursuant to 42 USC, §1983. Although defendants knew or should have known of the fact that this pattern of conduct was carried out by their agents, servants and/or employees, the defendant, **THE CITY** has not taken any steps or made any efforts to halt this course of conduct, to make redress to the plaintiff, **LOSSELL JOHNSON**, or other citizens injured thereby, or to take any disciplinary action whatever against any of their employees or agents.

47. The unlawful and illegal conduct of the defendants, their agents, servants and/or employees and each of them, deprived

plaintiff, **LOSSELL JOHNSON** of the following rights, privileges and immunities secured to his by the Constitution of the United States and of the State of New York: The right of plaintiff, **LOSSELL JOHNSON** to be secure in his person and effects against unreasonable search and seizure under the Fourth, Fifth and Fourteenth Amendments to the Constitution of the United States; the right of plaintiff, **LOSSELL JOHNSON**, to be informed of the nature and cause of the accusation against him as secured to his under the Sixth and Fourteenth Amendments to the Constitution of the United States; and the right of plaintiff, **LOSSELL JOHNSON**, not to be deprived of life, liberty or property without due process of law, and the right to the equal protection of the laws secured by the Fourteenth Amendment to the Constitution of the United States.

48. That the deprivation of plaintiff's Constitutional rights was the result of the unconstitutional acts of defendant, **SAVAGE**, while acting under color of state law and within the scope of his employ.

49. That the deprivation of plaintiff's Constitutional rights was the result of the defendant, **THE CITY's** custom and/or policy of arresting individuals without probable cause.

50. That the deprivation of plaintiff's Constitutional rights was the result of the defendant, **THE CITY's** custom and/or policy of arresting minorities without probable cause.

51. That the deprivation of plaintiff, **LOSSELL JOHNSON** Constitutional Rights was the result of the defendant, **THE CITY's** custom and/or policy of failing to discipline officers for arresting individuals without probable cause.

52. That the said customs and/or policies may be inferred from the existence of other similar Civil Rights actions that have been brought against the defendant, **THE CITY**.

53. That the detaining of plaintiff, **LOSSELL JOHNSON** without probable cause or justification was the result of customs and/or policies adopted by the defendant, **THE CITY**.

54. That the deprivation of plaintiff, **LOSSELL JOHNSON's** Constitutional Rights was the result of the defendant, **SAVAGE's** arrest of the plaintiff **LOSSELL JOHNSON** without probable cause.

55. That the deprivation of plaintiff, **LOSSELL JOHNSON's** Constitutional Rights was a result of the defendant, **THE CITY's** custom and policy in failing to discipline officers for the use of excessive force.

56. That the deprivation of plaintiff, **LOSSELL JOHNSON's** Constitutional Rights was the result of **SAVAGE's** use of excessive force.

57. That the customs and/or policies adopted by the defendant, **THE CITY** exhibited a deliberate indifference to the Constitutional rights of plaintiff, **LOSSELL JOHNSON**.

58. That by reason of the allegations as set forth in all of the aforementioned causes of actions, including, but not limited to the plaintiff's false arrest, false imprisonment, assault and battery, the negligence of the defendant and/or defendants, in the negligent hiring, negligent retention, and negligent training of its various employees and/or police officers, the plaintiff, **LOSSELL JOHNSON** was caused to have his civil rights as guaranteed under the U.S. Constitution, including, but not limited to the Fourth, Fifth and Fourteenth Amendments, violated by the defendant and/or defendants herein, as set forth under 42 U.S.C. Section 1983.

59. That, by reason of the foregoing, the plaintiff **LOSSELL JOHNSON** was injured; was rendered sick, sore, lame and disabled; was caused to undergo hospital and medical treatment and advice; was unable to pursue his usual and regular activities; and upon information and belief, his injuries are permanent in nature and effect.

60. That this action falls within one or more of the exceptions as set forth in CPLR Section 1602, involving the defendant and/or defendants, having acted in reckless disregard for the safety of others, as well as having performed intentional acts.

61. That, by reason of the foregoing, the plaintiff, **LOSSELL JOHNSON**, has sustained damages in an amount in excess of the

jurisdictional limits of all the lower Courts of the State of New York.

WHEREFORE, plaintiff, **LOSSELL JOHNSON**, demands judgment against the defendants, on the First, Second, Third, and Fourth causes of actions in an amount in excess of the jurisdictional limits of all of the lower Courts of the State of New York; together with interest, as well as the costs, disbursements and legal fees pursuant to 42 U.S.C. Section 1988, of these causes of action.

Dated: New York, New York
July 16, 2014

Yours, etc.

SCHMELKIN ASSOCIATES, P.C.
Attorneys for Plaintiff,
LOSSELL JOHNSON
Office & P.O. Address
11 Park Place, 10th Floor
New York, New York 10007
(212) 227-8865


ATTORNEYS VERIFICATION

JOEL SCHMELKIN, an attorney admitted to practice law in the State of New York, affirms the following under the penalties of perjury:

I am a member of the law firm of Schmelkin Associates, P.C., the attorneys of record for the plaintiff in the within action; I have read the foregoing **COMPLAINT** and know the contents thereof; the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief and that as to those matters, I believe it to be true. This verification is made by me and not by the plaintiff for the reason that plaintiff does not reside within the County where Schmelkin Associates, P.C. maintains its office.

The grounds of my belief as to all matters not stated upon my knowledge are conversations with plaintiff and contents of the file maintained by Schmelkin Associates, P.C.

Dated: New York, New York
July 16, 2014



JOEL SCHMELKIN

Index No.

Year 20

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF QUEENS

LOSSELL JOHNSON,

Plaintiff,

-against-

THE CITY OF NEW YORK and WARREN SAVAGE,

Defendants.

SUMMONS AND VERIFIED COMPLAINT

SCHMELKIN ASSOCIATES, P.C.

Attorneys for Plaintiff(s)

Office and Post Office Address, Telephone

11 PARK PLACE, 10TH FLOOR

NEW YORK, N.Y. 10007

TEL: (212) 227-8865

Pursuant to 22 NYCRR 130-1.1-a, the undersigned, an attorney admitted to practice in the courts of New York State, certifies that, upon information and belief and reasonable inquiry, (1) the contentions contained in the annexed document are not frivolous and that (2) if the annexed document is an initiating pleading, (i) the matter was not obtained through illegal conduct, or that if it was, the attorney or other persons responsible for the illegal conduct are not participating in the matter or sharing in any fee earned therefrom and that (ii) if the matter involves potential claims for personal injury or wrongful death, the matter was not obtained in violation of 22 NYCRR 1200.41-a.

Dated: July 16, 2014

Signature

Print Signer's Name..... Joel Schmelkin

Service of a copy of the within

is hereby admitted.

Dated:

Attorney(s) for

PLEASE TAKE NOTICE

Check Applicable Box

☐

NOTICE OF
ENTRY

that the within is a (certified) true copy of a
entered in the office of the clerk of the within-named Court on

20

☐

NOTICE OF
SETTLEMENT

that an Order of which the within is a true copy will be presented for settlement to the
Hon. , one of the judges of the within-named Court,
at
on

20

, at

M.

Dated:

SCHMELKIN ASSOCIATES, P.C.

Attorneys for Plaintiff(s)

Office and Post Office Address, Telephone

11 PARK PLACE, 10TH FLOOR

NEW YORK, N.Y. 10007

To: